



Review of the Civil Commitment of Sexually Violent Predators

November 14, 2011

BACKGROUND

Civil commitment of sexually violent predators is the process of involuntarily confining offenders after they have served a prison sentence. While under civil commitment, the individual has access to treatment and is not released until a court determines he or she is at sufficiently low risk of committing another violent sexual offense. The program was established in the *Code of Virginia* in 1999, and the first sexually violent predator was placed under civil commitment in 2003. Since 2003, Virginia has civilly committed about seven percent of the more than 4,000 offenders released from the Department of Corrections (DOC) who were convicted of a “predicate crime” (crimes, such as rape, that are identified in the *Code of Virginia* as making an offender eligible for civil commitment). As of August 2011, 270 sexually violent predators were in civil commitment at the Virginia Center for Behavioral Rehabilitation.

KEY FINDINGS

Our review of the civil commitment of sexually violent predators and the conditional release program administered by the Department of Behavioral Health and Developmental Services (Behavioral Health) found that:

- Virginia’s switch to using the Static-99 actuarial risk assessment instrument and a threshold score of “5” in 2006 resulted in a 450 percent increase in the number of offenders eligible for civil commitment.
- Virginia’s actuarial risk assessment screening approach is flawed, in part because it does not allow qualified professionals to use their professional judgment to review certain high-risk offenders, including those who state their intent to re-offend.
- Virginia’s risk assessment process and civil commitment proceedings rely heavily on expert evaluators, but these evaluators find offenders to be sexually violent predators at widely varying rates. The risk assessment process also does not provide enough flexibility or sufficiently use consensus to decide whether to proceed with the civil commitment process.
- Costs at the Virginia Center for Behavioral Rehabilitation are within the range of selected Virginia facilities and similar facilities in other states. They are higher, however, than the costs at Florida’s privatized facility.
- The rate of growth of Virginia’s civil commitment program can be reduced if certain program changes are made.

SUMMARY OF SELECTED RECOMMENDATIONS

- A specific actuarial risk assessment instrument and threshold score should not be referenced in statute. Instead, Behavioral Health and DOC should identify a current and scientifically validated instrument and threshold score, and an estimated risk of re-offense associated with the score. The agencies should report biennially to the General Assembly whether they intend to continue to use the same instrument or a different one, and the reasons for, and implications of, the decision.
- The overall risk assessment process needs to be improved. Behavioral Health and DOC should (1) develop new procedures to define what factors the Commitment Review Committee uses as the basis for its recommendations, without access to an offender’s clinical evaluation; (2) develop guidance about the conditions under which a second clinical evaluation is necessary; and (3) assess whether it is feasible to provide additional treatment to violent sex offenders while they are in prison.